

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JOSEPH H. HALLOWELL,

Appellant,

v.

DEPARTMENT OF SOCIAL AND HEALTH
SERVICES,

Respondent.

) Case No. SUSP-02-0004

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** Pursuant to RCW 41.64.060 and WAC 358-01-040, this appeal came on for hearing before the Personnel Appeals Board, GERALD L. MORGEN, Vice Chair. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on November 13, 2002. RENÉ EWING, Member, reviewed the file, exhibits and recorded proceedings, and participated in the decision in this matter.

1.2 **Appearances.** Appellant Joseph Hallowell appeared *pro se*. Laura Wulf, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a two-day suspension without pay for neglect of duty, insubordination, gross misconduct and willful violation of agency policy. Respondent alleges that Appellant made inappropriate and offensive remarks of a racial and sexual nature.

1.4 Citations Discussed. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

II. FINDINGS OF FACT

2.1 Appellant Joseph Hallowell is a Rehabilitation Security Officer 1 and permanent employee for Respondent Department of Social and Health Services. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on February 13, 2002.

2.2 By letter dated January 9, 2002, Robert L. Nelson, Acting Superintendent of Maple Lane School, informed Appellant of his two-day suspension without pay, effective on January 16, 2002 and on January 23, 2002. Mr. Nelson charged Appellant with neglect of duty, insubordination, gross misconduct and willful violation of agency policy, alleging that Appellant made inappropriate and offensive remarks to coworkers.

2.3 Appellant began his employment at the Maple Lane School in July 1999. Appellant was assigned to work in the Maple Lane Security Office. Appellant has no history of prior formal disciplinary action or written letters of reprimand or counseling. However, Appellant's second line supervisor, Security Manager Dennis Harmon, received complaints about Appellant's behavior, demeanor and his gruff and argumentative manner with other coworkers. In response to these complaints, Mr. Harmon spoke with Appellant and directed him to behave himself in a respectful and professional manner. Mr. Harmon observed temporary changes in Appellant's demeanor, however, he noted that Appellant usually reverted back to his old behavior.

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2 2.4 Appellant's performance evaluations reflect that he performs his job duties well, however,
3 they also address his unprofessional behavior and difficulties interacting with other staff. To
4 address Appellant's interpersonal problems, Appellant was directed to attend a class on "self-
5 discipline and control" in April 2001. On June 8, 2000 Appellant attended a class on sexual
6 harassment.

7
8 2.5 Maple Lane School has adopted Policy 33 which requires that employees act as role models
9 and handle conflict, frustration, and resolution of problems in a non-aggressive manner. The school
10 has also adopted Policy 34 which addresses employee standards of conduct and states, in pertinent
11 part, that employees must:

- 12 • not discriminate against . . . coworkers because of race, color, religion, age, sex, ethnicity or
13 sexual orientation.
- 14 • Maintain professional standards and be mutually respectful with . . . colleagues . . .
- 15 • Not engage in . . . emotional abuse of . . . employees . . .

16 2.6 Appellant acknowledged that he received and read these policies on January 14, 2000 and
17 on February 19, 2001.

18
19 *Incident #1*

20 2.7 Christopher King, currently a Social Worker with the Department of Social and Health
21 Services, was a Juvenile Residential Counselor at Maple Lane School from September 1997
22 through September 2001. Mr. King has known Appellant since 1997 and they consider each other
23 to be friends. Mr. King and Appellant engaged in joking and bantering in the workplace. Appellant
24 is Caucasian and Mr. King is African American.

1 2.8 In the summer of 2001, Mr. King was temporarily assigned to work in the security office.
2 On July 19, 2001, Appellant and Mr. King were engaged in conversation when Appellant told Mr.
3 King, "I saw your family running down the street last night with stereos in their hands." Duane
4 Bailey, Security Officer 1, overheard the comment.

5
6 2.9 Mr. Bailey described the atmosphere in the security office as a positive one where the
7 security officers got along, poked fun at each other, and basically formed a "good team." However,
8 he did not feel that their joking overstepped professional boundaries, and he had never heard other
9 staff make racial slurs. Mr. Bailey interpreted Appellant's comment as a negative stereotype of
10 African Americans, he felt it was inappropriate, and he became uncomfortable.

11
12 2.10 Mr. King testified that he did not find Appellant's comment to be inappropriate based on the
13 nature of their friendship. However, he recognized that someone overhearing the comment could
14 interpret it as an offensive racial slur.

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16 *Incident #2*

17 2.11 On July 20, 2001, a resident received a package that contained a fake penis. Appellant
18 commented to Mr. King that the penis was "even bigger than a black man's, huh Chris?" Mr. King
19 was not offended, but recognized that the comment could be considered a racial stereotype. Mr.
20 Bailey overheard the comment and felt uncomfortable with Appellant's comment and felt it went
21 beyond the standard office joking.

22
23 *Incident #3*

24 2.12 On July 27, 2001, Mr. King was sitting in the security office when Appellant entered and
25 asked for the transportation schedule. Mr. King responded that it was on the counter. After
26 Appellant retrieved the log, he went to where Mr. King was sitting and told him to, "get his lazy ass

1 out of the way!" Mr. King became upset and he and Appellant engaged in a verbal altercation. Mr.
2 King later accepted an apology from Appellant and considered the issue resolved.

3
4 2.13 Mr. Bailey, who witnessed the incident, again felt that Appellant was being inappropriate.
5 Mr. Bailey reported the altercation between Appellant and Mr. King to Mr. Harmon. Mr. Bailey
6 also reported the July 19 and 20 incidents. On August 8, 2001, Mr. Harmon initiated a Conduct
7 Investigation for each of the three incidents.

8
9 *Incident #4*

10 2.14 On September 6, 2001, Juvenile Rehabilitation Counselor Susan Copeland was packing a
11 resident's belongings. Ms. Copeland was working in the storage room of Pacific Living Unit.
12 Appellant arrived at the building, knocked on the door and Ms. Copeland let him inside. Ms.
13 Copeland returned to the storage room and was kneeling on the floor packing the property.
14 Appellant subsequently entered the storage room and told Ms. Copeland, "Oh, I see you're on your
15 knees again." Based on the way Appellant made the statement, Ms. Copeland interpreted the
16 statement as having a sexual overtone and she felt uncomfortable, offended and angry, but did not
17 say anything directly to Appellant. Ms. Copeland subsequently approached her supervisor, Cathy
18 Hanson, and reported the incident. Ms. Hanson observed that Ms. Copeland visibly was upset.

19
20 2.15 Appellant denies that he made the comment to Ms. Copeland and asserts that his comment
21 was, "I see you're on your knees again doing inventory." However, we do not find his testimony
22 credible and find Ms. Copeland's version of the events more believable. Furthermore, we find no
23 reason or motive for Ms. Copeland to fabricate the allegation.

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25 2.16 On September 11, 2001, Acting Superintendent Robert Nelson informed Appellant that he
26 was being reassigned to another booth effective immediately pending investigation into the CIRs.

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2 2.17 The results of the subsequent investigations were forwarded to Acting Superintendent
3 Robert Nelson, who was Appellant's appointing authority when the discipline was imposed. In
4 determining the level of discipline, Mr. Nelson reviewed the results of the Conduct Investigation
5 Reports regarding each of the three incidents and Appellant's responses to the charges. In addition,
6 Mr. Nelson spoke to Appellant to discuss the charges. After considering Appellant's responses, Mr.
7 Nelson did not feel that Appellant's denials were credible.

8
9 2.18 Mr. Nelson concluded that Appellant neglected his duty to act in a professional manner and
10 that his misconduct violated Policies 33 and 34. Mr. Nelson further concluded that Appellant was
11 insubordinate when he failed to comply with supervisory directives that he act in a professional
12 manner at all times and to treat others in a respectful manner. Mr. Nelson was further concerned
13 with Appellant's inappropriate pattern of behavior and his failure to act as a positive role model.
14 Mr. Nelson concluded that this repeated pattern of behavior constituted gross misconduct. Mr.
15 Nelson felt that a two-day suspension without pay was appropriate and would send a message to
16 Appellant and other employees that such conduct would not be tolerated at Maple Lane School.

17 18 **III. ARGUMENTS OF THE PARTIES**

19 3.1 Respondent argues that Appellant's inappropriate comments and his racial and sexual
20 comments created a problem in the workplace, were offensive to others and posed a problem that
21 should be taken seriously. Respondent argues even if an employee who is the subject of a racial
22 slur or derogatory comment is not personally offended, it is nonetheless, inappropriate and
23 unacceptable to make such comments in the workplace. Respondent asserts that Appellant had
24 been told repeatedly by his superiors to act in an appropriate and professional manner and to refrain
25 from making impulsive comments. Respondent argues that Appellant failed to comply with these
26 directives. Respondent argues that although the environment in the security office was a fun one

1 where jokes were exchanged, other staff did not make sexual innuendos or racial slurs. Respondent
2 argues that management had the discretion and authority to reassign Appellant and that the action
3 was not punishment. Respondent further argues that a two-day suspension is mild and is aimed at
4 getting Appellant's attention.

5
6 3.2 Appellant acknowledges that he made "stupid comments," but asserts that such behavior
7 was not unusual in the workplace. Appellant asserts that other employees also engaged in
8 inappropriate conversation, used profanity and made inappropriate remarks. Appellant argues that
9 he has been singled out and that others who have engaged in similar misconduct were not punished.
10 Appellant asserts that he and Mr. King are friends and that he apologized to Mr. King, that they
11 resolved their issues and moved forward. Appellant argues that his reassignment to a security booth
12 was punishment itself and that the suspension was unjust.

13 14 IV. CONCLUSIONS OF LAW

15 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
16 herein.

17
18 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
19 the charges upon which the action was initiated by proving by a preponderance of the credible
20 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
21 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
22 Corrections, PAB No. D82-084 (1983).

23
24 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
25 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
26 of Social & Health Services, PAB No. D86-119 (1987).

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2 4.4 Insubordination is the refusal to comply with a lawful order or directive given by a superior
3 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.
4 Dep't of Social & Health Services, PAB No. D94-025 (1995).

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6 4.5 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
7 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

8
9 4.6 Willful violation of published employing agency or institution or Personnel Resources
10 Board rules or regulations is established by facts showing the existence and publication of the rules
11 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
12 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

13
14 4.7 Respondent has proven by a preponderance of the credible evidence that Appellant made
15 offensive and inappropriate comments to Mr. King. Mr. King testified that he was not personally
16 offended by Appellant's comments to him on July 19 and 20, 2001. However, Appellant's
17 comments were made in the presence of Mr. Bailey, who was offended by the nature of the
18 remarks. Therefore, Appellant's comments subjected another employee to an offensive work
19 environment. Furthermore, Appellant was unprofessional and disrespectful when he told Mr. King
20 to get his "lazy ass out of the way." Respondent has also proven by a preponderance of the credible
21 evidence that Appellant's comment to Ms. Copeland was unprofessional and inappropriate and
22 further reflect his failure to treat coworkers with dignity and respect.

23
24 4.8 Respondent has met its burden of proof that Appellant neglected his duty, was insubordinate
25 and willfully violated the Maple Lane School Policies 33 and 34. Furthermore, Appellant's
26 offensive remarks rise to the level of gross misconduct.

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2 4.9 Appellant was aware of the standards of conduct expected in the workplace, but he
3 continued to make inappropriate remarks in disregard of these standards. Sexually demeaning
4 comments, racial epithets, and negative ethnic stereotypes should not be condoned in any
5 workplace. Furthermore, even when the recipient of a negative stereotype, such as Mr. King, does
6 not find it personally offensive, it is nonetheless unprofessional and inappropriate to engage in such
7 banter in the workplace. Finally, Appellant objects to his reassignment to a control booth and
8 asserts that this reassignment was punishment. However, it was within Mr. Nelson's authority to
9 reassign Appellant pending the investigations and there is no evidence that this reassignment was
10 punitive in nature.

11
12 4.10 We conclude that a two-day suspension without pay is appropriate under the circumstances
13 and should serve as an opportunity for the Appellant to correct his behavior. Therefore, the appeal
14 of Joseph H. Hallowell should be denied.

15
16 **V. ORDER**

17 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Joseph H. Hallowell is denied.

18 DATED this _____ day of _____, 2002.

19
20 WASHINGTON STATE PERSONNEL APPEALS BOARD

21 _____
22 Gerald L. Morgen, Vice Chair

23 _____
24 René Ewing, Member